

### REMARKS

This paper is in response to the official action dated August 26, 2003 (hereafter, the "official action").

Claims 1-8, 11, 13-16, and 19-21 are pending in the application. By the foregoing amendments, claims 1, 4, 5, 7, 8, 11, 14, 15, 16, and 19 have been amended, and new claims 22-24 have been added. No fee is due for new claims 22-24. Claims 1-8, 11, 13-16, and 19-24 are presently at issue.

Support for the amendments to the claims may be found variously throughout the application and in the claims as originally filed. Support for new claims 22-24 may also be found variously throughout the application and in the claims as originally filed. No new matter has been added.

Claims 1-4, 6-8, 16, and 19-21 have been rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-25 of U.S. Patent No. 6,079,339 to Houk Jr. *et al.* ("the '339 patent").

Claims 11 and 13-15 have been allowed, and claim 5 has been objected to, but is allowable in substance.

The single basis for rejecting the claims is addressed herein. Reconsideration of the application, as amended and in view of the following remarks, is solicited.

## CLAIM REJECTIONS

Applicants respectfully traverse the rejections of claims 1-4, 6-8, 16, and 19-21 for obviousness-type double patenting over claims 1-25 by the '339 patent.

Obviousness-type double patenting requires the rejection of an application claim when the claimed subject matter is not patentably distinct from the subject matter claimed in a non-prior art, commonly owned patent or patent application. The analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. §103(a) rejection. *See* M.P.E.P § 804 B.1.

### *I. Claims 1-4 and 6-8*

The '339 patent does not disclose or suggest a shelving system comprising a panel having a plurality of support structures, wherein the plurality of support structures include at least one inner support structure having a curved configuration resulting in a non-continuous height over the length of the panel *and at least one outer support structure having a continuous height over the length of the panel*, as recited by amended claim 1 and dependent claims 2-8.

The examiner previously acknowledged that the '339 patent does not disclose "support structures having a constant height across the length of the panel," as recited by claim 1. *See* official action dated December 19, 2002 at page 7. It is respectfully submitted that the '339 patent also does not suggest such support structures. For example, the '339 patent discloses that "each rail has a lower portion having a generally curvilinear lower edge having a vertex," because such a configuration maximizes material usage where strains occur in the panels. *See*, for example, the '339 patent at column 3, lines 5-7 and at column 5, lines 53-61.

In view of the above-referenced teachings regarding the advantages and desirability of curvilinear rails, it is respectfully submitted the '339 patent does not disclose or suggest *the combination* of at least one outer support structure having a continuous height over the length of the panel with at least one inner support structure having a curved configuration resulting in a non-continuous height over the length of the panel, as recited by claims 1-8. Therefore, the claimed subject matter of claims 1-8 is patentably distinct from the subject matter claimed in the '339 patent.

In view of the above observations, the applicants respectfully request that the nonobviousness type double patenting rejection of claims 1-4 and 6-8 over the '339 patent be withdrawn.

*II. Claims 16 and 19-21*

For reasons similar to those provided above with respect to claims 1-4 and 6-8, the '339 patent does not disclose or suggest a shelving system comprising at least one panel, wherein each panel includes (1) a set of first support structures and (2) a second set of support structure, wherein the set of first support structures are box beams and the set of second support structures are Z-shaped beams, as recited by claims 16 and 19-21. Moreover, the '339 patent does not disclose or suggest a set of support structures including a pair of side walls, an upper wall, and a lower wall defining alternating oppositely disposed cavities, wherein a first cavity is defined by the side walls and the upper wall, and a second cavity adjacent the first cavity is defined by the side walls and the lower wall, as recited by claims 16 and 19-21. Panels incorporating a combination of such support structures exhibit unexpectedly improved structural integrity.

Therefore, the claimed subject matter of claims 16 and 19-21 is patentably distinct from the subject matter claimed in the '339 patent. In view of the above observations, the applicants respectfully request that the nonobviousness type double patenting rejection of claims 16 and 19-21 over the '339 patent be withdrawn.

*III. Claims 11 and 13-15*

The examiner's indication that the above-referenced claims are allowable is graciously acknowledged. It is respectfully submitted that the amendments made to these claims does not affect the reasons provided in the examiner's statement of allowance, and an indication that the claims remain allowable in view of the amendments made herein is respectfully solicited.

*III. New claims 22-24*

New claims 22-24 are patentably distinct from claims 1-25 of the '339 patent for at least the reasons provided above with respect to their respective base claims.

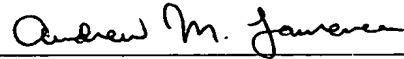
*V. Conclusion*

It is respectfully submitted that the application is now in condition for allowance. Should the examiner wish to discuss the foregoing, or any matter of form or procedure in an effort to advance this application to allowance, she is respectfully invited to contact the undersigned attorney at the indicated telephone number.

Respectfully submitted,

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